

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of Michael Ryan,
individually and d/b/a MJR Remodelers
and Home Maintenance and formerly
known as MJR Services, Inc.

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matter came on for a prehearing conference before Administrative Law Judge Barbara L. Neilson on April 7, 2005, at 1:30 p.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101-2130, appeared on behalf of the Department of Commerce ("the Department"). There was no appearance by or on behalf of the Respondent, Michael Ryan, individually and d/b/a MJR Remodelers and Home Maintenance and formerly known as MJR Services, Inc., 1112 Woodhill Road, Burnsville, MN 55337. The OAH record closed at the conclusion of the prehearing conference on August 12, 2004.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the office of Kevin Murphy, Deputy Commissioner of Commerce, 85 Seventh Place East, Suite 500, St. Paul, Minnesota 55101-2198, to ascertain the procedure for filing exceptions or presenting argument. Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUES

The issues presented in this case are whether the Respondent, Michael Ryan, individually and d/b/a MJR Remodelers and Home Maintenance and formerly known as MJR Services, Inc., entered into a residential building contract without a license in violation of Minn. Stat. §§ 326.84, subds. 1 and 1b, and 326.842; failed to complete the remodeling job and thereby breached the contract, in violation of Minn. Stat. § 326.91, subd. 1(4); issued insufficient funds checks and failed to pay for a fireplace, thereby demonstrating financial irresponsibility in violation of Minn. Stat. § 326.91, subd. 1(8); and failed to respond to the Department's investigation, in violation of Minn. Stat. § 45.027, subd. 1a; and, if so, whether the Respondent should be subject to censure or a civil penalty pursuant to Minn. Stat. §§ 45.027, subds. 6 - 7, and 326.91, subd. 1.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges initiating this contested case proceeding was served on the Respondent, Michael Ryan, individually and d/b/a MJR Remodelers and Home Maintenance and formerly known as MJR Services, Inc., via first class mail on February 24, 2005, at the following address: Michael J. Ryan, 1112 Woodhill Road, Burnsville, MN 55337.^[1]

2. The Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges set a prehearing conference for April 7, 2005, at 1:30 p.m.^[2]

3. The Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges contained the following language:

Respondent's failure to appear at the contested case hearing and/or prehearing conference may result in a finding that the Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and its proposed action may be upheld.^[3]

4. The Respondent did not file a notice of appearance or make any request prior to the April 7, 2005, prehearing conference for a continuance or any other relief. No one appeared at the prehearing conference on April 7, 2005, on behalf of the Respondent.

5. Because the Respondent failed to appear at the prehearing conference in this matter, he is in default.

6. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 45.027, and 326.91.

2. The Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges issued by the Department was proper and the Department has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The Respondent, having made no appearance at the prehearing conference, and not requesting any continuance or relief, is in default. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges are hereby taken as true.

4. By entering into a residential building contract without a license, failing to complete the remodeling job, issuing insufficient funds checks and failing to pay for a fireplace, and failing to respond to the Department's investigation, the Respondent has violated Minn. Stat. §§ 45.027, subd. 1a, 326.84, subds. 1 and 1b, 326.842, and 326.91, subd. 1(4) and (8). The Respondent is subject to censure and/or civil penalties pursuant to Minn. Stat. §§ 45.027, subds. 6 - 7, and 326.91, subd. 1. The imposition of sanctions is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Commerce censure and/or impose an appropriate civil penalty against the Respondent, Michael Ryan, individually and d/b/a MJR Remodelers and Home Maintenance and formerly known as MJR Services, Inc.

Dated: May 4, 2005

/s/ Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

Reported: Default.

^[1] Affidavit of Service by First Class Mail of Jacki Stuhl attached to Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges.

^[2] Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges, p. 1.

^[3] *Id.*, p. 4.